IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B. Civil Revision Petition 121/2007

Lalit Mohan Gupta Vs. Ashok Kumar Saini

Date of Judgment :: 16th August, 2007

Hon'ble Dr. Vineet Kothari, J.

Mr.A.K. Pareek for the petitioner.

This revision petition is directed against the order dated 7.7.2007 passed by the learned trial Court whereby the learned trial Court allowed the application under Order 9 Rule 13 C.P.C. on the condition of imposition of cost of Rs.1,000/- and set aside the judgment and decree dated 26.8.2004 in a money recovery suit.

Learned counsel for the petitioner, Mr. A.K. Pareek, relying upon the judgments in the case of **State of Orissa Vs. Dhaniram Luhar** (2004) 5 SCC 568, **Ramesh Chand Vs. Janaknandan Saxena & Ors.** (2007) WLC (Raj.) U.C. 379 and **Ghanchi Rubina Salimbhai Vs. Metubha Diwansingh Solanki & Ors.** (2003) 7 SCC 183, has submitted that the learned trial Court has not assigned any

reason for allowing the application under Order 9 Rule 13 C.P.C. and, therefore, the impugned order deserves to be set aside.

Having gone through the impugned order and considering the submission made by learned counsel for the petitioner and having gone through the judgments cited by the bar, this Court is of the opinion that there is no force in this revision petition and the same deserves to be dismissed. It is true that reasons ought to have been recorded by the learned trial Court for allowing the said application in the light of the judgments cited by learned counsel for the petitioner, but it appears from the facts of the case that the defendant had put in appearance before the learned trial Court and the case was at the stage of cross-examination of the plaintiff's witnesses and thereafter, the defendant did not appear for certain reasons. The trial Court having appreciated all the facts came to the conclusion that an opportunity to the defendant to argue the case could be afforded compensating the plaintiff by cost of Rs.1,000/-. The said order appears to be just and proper and, therefore, is not required to be interfered with in revisional jurisdiction under Section 115 C.P.C. Consequently, this revision petition being devoid of merit is, hereby, dismissed.

[**Dr. Vineet Kothari**],**J.**

S.S.
Jr.P.A.